

EXHIBIT 9



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

NETLIST, INC., (CAUSE NO. 2:22-CV-203-JRG
)
Plaintiff, ()
)
vs. ()
)
MICRON TECHNOLOGY, INC., ()
et al.,) MARSHALL, TEXAS
)
) AUGUST 22, 2023
Defendants.) 9:00 A.M.

MOTION HEARING

BEFORE THE HONORABLE ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE

SHAWN McROBERTS, RMR, CRR
100 E. HOUSTON STREET
MARSHALL, TEXAS 75670
(903) 923-8546
wn.mcroberts@txed.uscourts.gov

1 we're not just going to do that, that would be something we
2 could engage, but I've seen no principled reason for the
3 10-year cutoff. It doesn't in any way relate to the nature of
4 the case or the technology. The patents-in-suit were filed
5 more than 10 years ago, and so the technology is a vintage
6 that's actually much older than 10 years. So there is also a
7 concern about that arbitrary 10-year cutoff.

8 THE COURT: What year does the damages model begin?

9 MR. SHEASBY: So the damages model began for the two
10 patents-in-suit that relate to DDR4. DDR4 began to be
11 developed in 2011, I believe, and I believe our patents were
12 filed in 2004 and 2007.

13 THE COURT: All right. Thank you, Mr. Sheasby.

14 MR. RUECKHEIM: Your Honor, Mike Rueckheim on behalf
15 of the Micron Defendants.

16 Your Honor asked how Netlist defines the relevant
17 technology here, and Mr. Sheasby I think focused in on DRAM.
18 Netlist has already defined the relevant technology here, and
19 this is mentioned in Micron's briefing. There is three --
20 Netlist served a document request type letter first thing in
21 the case with hundreds of different topics in it, and there's
22 three topics in there, 33, 44, and 75--it might be four; I
23 think 62 as well is mentioned in our briefing--that defines
24 -- that says, We want license agreements relating to L R dim
25 data buffer retiming features as used in LRDIMM. We have

1 license agreements relating to implementing power management
2 circuitry on the modular board and the DDR5 DIMM.

3 And so that's what we did. We produced -- there's a
4 little difference, I think, maybe in the disagreement or
5 changed in scope as to what Netlist is seeking in its motion
6 versus what they asked us to produce or we did produce. And
7 as far as the relevant time frame, most of the patents, four
8 of them in this case, issued in 2020 to more recent, so just
9 within the last couple of years. There is the two patents
10 that relate to what's called HBM, or they're accusing HBM
11 products that issued earlier in time, 2016, 2014, but the
12 first accused sale of HBM products wasn't until 2021. So we
13 chose 10 years because it's well before any hypothetical
14 negotiation in this case.

15 So that takes us to I think the real problem, as --
16 counsel for Netlist focused in on this Rambus agreement.
17 That's the real dispute here--whether or not we should produce
18 this Rambus agreement. And we have withheld the Rambus
19 agreement. We've offered to produce the Rambus agreement with
20 the royalty amount redacted out. And the problem here, Your
21 Honor -- and I agree with Mr. Sheasby that this can be
22 addressed at a MIL stage or a *Daubert* stage or an
23 admissibility-type argument, but the problem here is I did
24 attend the Samsung/Netlist trial, and as stated in Netlist's
25 own briefing--this is from the joint status report they filed

1 last night--they mentioned that the royalty amount, this
2 amount was mentioned repeatedly at trial. And they did. They
3 mentioned this huge amount of the Samsung/Rambus license
4 repeatedly at trial, yet when they're talking to Judge
5 Gilstrap in the pretrial proceedings--and we've quoted a lot
6 of these--this is Netlist's counsel says, "Mr. Cordell,
7 Samsung's counsel, is right. If the expert would have come in
8 and said X hundred million dollars is what they paid Rambus,
9 give us that. That would be totally inappropriate." Totally
10 inappropriate. And it is totally inappropriate. To give the
11 jury such a high number like that, it risks jury confusion,
12 and that's exactly why we're offering the license with the
13 license amount redacted.

14 There's a lot of issues that can come up at MILs and we
15 can address it then, we can address it at *Daubert*, but to make
16 sure this issue was addressed, because it's an important
17 issue, we are offering to produce it with that amount
18 redacted.

19 THE COURT: All right. I don't see any basis to
20 redact the amount during discovery if you're not able to show
21 that it is not discoverable. And I understand that you take
22 the position that improper use was allowed of the amount at a
23 prior trial. I don't know what to do with that argument.
24 You're saying the Court is not able to properly control the
25 arguments of counsel? I'm not sure what.

1 MR. RUECKHEIM: No, Your Honor.

2 I do think this can be addressed in MIL or *Daubert*.

3 This -- so the reason we're withholding is lack of relevance.

4 This is a non-technically comparable license. Counsel for

5 Netlist just said it was technically comparable, but its own

6 expert in the Samsung case said the opposite; it shouldn't be

7 used to determine the royalty amount. And so that's the

8 reason for withholding it, but I do understand Your Honor's

9 point that this can also be addressed at a later time.

10 THE COURT: All right. Well, with respect to the
11 Rambus license, I will order that it be produced unredacted.

12 With respect to other licenses, point me to the
13 description that you say is in your brief of the relevant
14 technology.

15 MR. RUECKHEIM: If Your Honor has -- I think we
16 copied into the joint status report that was filed last
17 night --

18 THE COURT: All right.

19 MR. RUECKHEIM: -- as -- I don't have the docket
20 number, but it was filed last night.

21 THE COURT: That was Docket No. 152.

22 MR. RUECKHEIM: 152? And on page 3, if you see near
23 the bottom of the page, there's some wording in bold. That's
24 directly quoting Netlist document requests in this case.

25 THE COURT: And what you're saying is that the only

1 licenses that they have requested in discovery are those that
2 are described at the bottom of page 3 of your joint notice?

3 MR. RUECKHEIM: That is correct, Your Honor.

4 THE COURT: All right. Well, let me hear the
5 response to that. Thank you, Mr. Rueckheim.

6 MR. SHEASBY: Your Honor, that's not accurate.

7 There was an original letter that was sent out to begin to
8 discuss documents that are relevant. We asked for certain
9 license agreements. We listed 163 categories of license
10 agreements; 163 categories of topics that we wanted discovery
11 on. It soon became apparent to us that we were not
12 comfortable with the way Micron was identifying the buffer or
13 relating to buffer or relating to HBM or relating to on-module
14 power management because that would require it to literally go
15 through each of the patents that were licensed to make a
16 determination, which I -- they could not do and I -- it's not
17 proper for them -- it would be -- it's inconceivable -- it's
18 unfeasible for them to represent that they went through each
19 of the license agreements and identified a patent that relates
20 to a buffer or relates to on-module power management or
21 relates to some feature of an LRDIMM.

22 And so what we did in our subsequent meet and confers is
23 we just said basically, Give us anything that relates to
24 semiconductor or semiconductor manufacturing, because DRAMs
25 and HBM are made--HBM in particular are made using a

1 MR. RUECKHEIM: Thank you, Your Honor.

2 THE COURT: All right. Thank you.

3 And we're adjourned.

4 (End of hearing.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 I HEREBY CERTIFY THAT THE FOREGOING IS A
2 CORRECT TRANSCRIPT FROM THE RECORD OF
3 PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

4 I FURTHER CERTIFY THAT THE TRANSCRIPT FEES
5 FORMAT COMPLY WITH THOSE PRESCRIBED BY THE
6 COURT AND THE JUDICIAL CONFERENCE OF THE
7 UNITED STATES.

8
9 S/Shawn McRoberts

08/24/2023

10 _____ DATE _____
11 SHAWN McROBERTS, RMR, CRR
FEDERAL OFFICIAL COURT REPORTER

12
13
14
15
16
17
18
19
20
21
22
23
24
25